



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20350-1000

CONTRACT NO0024-88-C-0206

CONTRACT FOR THE DONATION OF
SUBMARINE CROAKER (AGSS-246)

THIS CONTRACT entered into this 4th day of November, 1988 by and between the UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the Department of the Navy and the CITY OF BUFFALO (hereinafter referred to as the "DONEE"):

WITNESSETH:

WHEREAS, the Act of August 10, 1956 (P. L. 1028, 84th Congress) 10 U.S.C. 7308, authorizes the Secretary of the Navy to transfer by gift or otherwise, on terms prescribed by him, an obsolete vessel of the Navy to any State of the United States, or any municipal corporation or political sub-division thereof, or any corporation or association whose Charter denies it the right to operate for profit; and

WHEREAS, the DONEE has applied for donation of the obsolete submarine CROAKER (AGSS-246) (hereinafter sometimes called the "Vessel"), and has indicated its intention to preserve and exhibit the vessel; and

WHEREAS, the DONEE agrees to and undertakes the obligation to make and keep the Vessel safe and presentable for public exhibition and inspection, at no expense to the Government; and

WHEREAS, pursuant to 10 U.S.C. 7308, notice of the proposed transfer has been duly sent to the Congress, and Public Law 100-526 was enacted to expedite this donation;

NOW THEREFORE, the Government agrees to transfer the Vessel to the DONEE and the DONEE agrees to accept the Vessel subject to the following terms and conditions:

1. The Government shall, subject to the provisions of Article 8 hereof, deliver the Vessel to the DONEE at the Inactive Ship Maintenance Facility, Portsmouth, Virginia, on an "as is, where is" basis and without warranty of any kind, and shall notify the DONEE of the delivery date sufficiently in advance thereof to enable the DONEE to make the necessary arrangements for acceptance of delivery.

2. The DONEE shall accept the Vessel upon delivery by the Department of the Navy.

3. The DONEE shall not activate or permit to be activated any system aboard the Vessel for the purpose of navigation or movement of the Vessel under its own power, and it also shall not activate or permit to be activated the galley for the purpose of serving meals.

4. The DONEE, including any successor in interest, shall establish and operate the Vessel on a non-profit basis as a public memorial/museum only, exhibit it at the Buffalo and Erie County Naval and Servicemen's Park, Buffalo, New York, and maintain the Vessel in such a manner that it will not cast discredit upon the Navy or upon the proud tradition of this Vessel, and will not allow the Vessel to become a menace to navigation, public health or safety.

5. The DONEE shall procure and maintain at its own expense, without reimbursement or contribution by the Government, from and after the delivery of the Vessel, Tower's broad-form liability insurance, including Tower's coverage for negligent damage during any tow and maintain marine hull and protection insurance in the amount of \$60,000.00 and collision protection and indemnity liability insurance in the amount of \$1,000,000.00. The DONEE shall further procure not less than \$250,000.00 of fire and extended-coverage insurance, including risks of vandalism and malicious mischief, and third-party bodily-injury liability insurance in an amount not less than \$1,000,000.00 (Single Limit) per occurrence and third-party property damage insurance in an amount not less than \$200,000.00 for any occurrence. Such insurance shall at all times protect the United States Government, its agents or employees, from claims resulting or alleged to have arisen from fault, negligence, wrongful acts or omissions of the Government, its agents or instrumentalities or their agents or employees, in berthing, preparation for use, repairing or any other use. Hull insurance shall name the Secretary of the Navy as loss payee. Liability insurance shall name the United States Government and Department of the Navy as additional insured and shall, as to form and insurers, be subject to the approval of the Assistant Secretary of the Navy, Insurance Section (ASN-CBM-CM-N), Washington, D. C. 20360.

6. The DONEE shall indemnify, save harmless, and defend the Government from and against all claims, demands, actions, liabilities, judgements, costs, and attorney's fees, arising out of, claimed on account of, or in any manner predicated upon personal injury, death, or property damage caused by or resulting from possession and/or use of the donated property.

7. The DONEE shall comply with all Federal, State and local laws and regulations in being or that may be hereinafter enacted or issued relating to protection of the environment, public health, and safety.

8. In the event that the Vessel is lost or destroyed prior to the time of delivery by fire, shipwreck, act of Providence or of a foreign power, or by any other means whatsoever, whether by negligence on the part of the Government, or not, this Agreement shall become void and of no effect.

9. No expense shall result to the Government as a consequence of the transfer of the Vessel to the DONEE or as a consequence of the terms and conditions prescribed hereunder.

10.(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved in accordance with this clause.

(c) "Claim," as used in this clause, means a written demand or assertion by one of the parties seeking, as a matter of right, the payment of money in sum certain, adjustment, or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the contractor shall be subject to a written decision by the Contracting Officer.

(2) For contractor claims of more than \$50,000, the Contractor shall submit with the claim a certification that -

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(3)(i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by Contractor, render a decision within 60 days of the request. For contractor-certified claims over of \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

11. The Government may, during a national emergency, request the DONEE to return the Vessel and the DONEE shall if and when requested to do so, return the Vessel at no cost or expense to the Government. In the event that the DONEE, or its assigns, shall fail to perform the obligations assumed under this contract, the Secretary of the Navy or his duly authorized representative may terminate this contract, provided that written notice to terminate, specifying the particulars wherein it is claimed that this contract has been violated, is transmitted by registered mail to the DONEE. The DONEE shall have ninety (90) days from the date of receipt of the written notice to cure the violations or deficiencies set forth

in said notice or to begin diligent efforts to effect any cure which may require more than ninety (90) days to complete. If, at the end of such time, it appears to the Secretary of the Navy, or his authorized representative, that the violations have not been cured, then the Contract shall be terminated, in which event the DONEE shall forfeit to the Government any and all rights that it may have in the Vessel, including rights in any improvements made to the Vessel or fixtures attached by the DONEE, as the Secretary of the Navy or his duly authorized representative may decide, and shall transfer title and return the Vessel to the location at which original delivery was made at at no cost or expense to the Government if the Secretary of the Navy or his duly authorized representative so directs. In the event the Vessel becomes a hazard to navigation, public health, safety or property, the Secretary of the Navy or his duly authorized representative may terminate this contract immediately.

12. The DONEE agrees to allow representatives of the Government access to all of the DONEE's records, documents, and facilities, including the Vessel, to assure the accuracy of information provided the donor and compliance with the terms of this contract.

13. The Government reserves the right to remove equipment from the Vessel required to satisfy Fleet material needs. In cases where such removal affects the display of the Vessel, the Navy will attempt to provide a cosmetically suitable piece of equipment as a replacement. The Government further reserves the right to conduct an annual physical inspection of the Vessel.

14. The DONEE acknowledges that it has executed and furnished to the Government representative under this contract, the Navy Form "Assurance of Compliance with the Department of Defense Directive under Title VI of the Civil Rights Act of 1964"; that it has read the explanation of the Department of Defense accompanying said Navy form; and that all sanctions imposed and actions taken as a result of non-compliance therewith shall be in accordance with DOD Directive 5500.11, dated 27 May 1971, "Non-Discrimination in Federally Assisted Programs."

15. To the extent that there is any conflict between this contract and any other contract or agreement entered into by the DONEE, this contract shall control to the extent that any rights, interest, or remedies of the Department of the Navy or the United States of America are involved.

16. The term "Government" as represented by the Department of the Navy means the Secretary, Under Secretary, or Assistant Secretary of the Navy, the Commander, Naval Sea Systems Command, and any other duly authorized representative, acting within the limits of his authority, that the aforesaid designated may appoint.

17. Upon delivery to and acceptance by the DONEE, title to the Vessel shall vest in the DONEE and title shall remain in the DONEE unless transferred under Article 11.

IN WITNESS WHEREOF, this contract has been duly executed as of the date first written above.

The UNITED STATES OF
AMERICA, Represented By
The Department of the Navy

By Everett Pyatt

EVERETT PYATT
ASSISTANT SECRETARY OF THE NAVY
(SHIPBUILDING AND LOGISTICS)

CITY OF BUFFALO

By James O. Griffin
MAYOR